allow a recovery by a vendor when the failure of the contract is due to some fault of the purchaser. *Woodbury* v. *Woodbury*, 47 N. H. 11. See 2 WARVELLE, VENDORS, 2 ed., § 876. However, where the vendor is at fault, he is generally not allowed to recover. *Hough & Wood* v. *Birge*, 11 Vt. 190. It would seem more equitable to make recovery depend on the usual principles of unjust enrichment, rather than on the fault of either party, and some cases adopt this view. *Allen* v. *Talbot*, 170 Mich. 664, 669, 137 N. W. 97, 98; *Jones* v. *Grove*, 76 Wash. 19, 22, 135 Pac. 488, 489. Thus the result reached in the principal case is justified by the fact that the defendant received no interest on the purchase price, which may therefore be balanced against the plaintiff's claim for the value of the use and occupation. *Ohio Valley Trust Co.* v. *Allison*, 243 Pa. St. 201, 89 Atl. 1132. See *Grainger* v. *Jenkins*, 156 Ky. 257, 259, 160 S. W. 926, 928.

RESTRAINT OF TRADE — COMPULSORY SALES — IMMATERIALITY OF MOTIVE IN REFUSING TO SELL. — The plaintiff maintained a system of retail stores. The defendant, manufacturer of "Cream of Wheat," sold to plaintiff at wholesale rates on condition that plaintiff would resell only at prices requested by defendant. Upon his refusal to maintain the retail price, defendant declined further to deal with plaintiff and requested that the jobbers to whom he sold do likewise. The plaintiff brought suit in the Federal District Court praying that the price maintenance scheme be declared a violation of the anti-trust laws, and that defendant be restrained from "cutting off the said plaintiff's supply" of "Cream of Wheat." On appeal to the Circuit Court of Appeals, the refusal of the lower court to grant a preliminary injunction was affirmed. *The Great Atlantic & Pacific Tea Co.* v. *Cream of Wheat Co.* (not yet reported).

The court brushes aside the plaintiff's contention that the defendant's system of price maintenance was in restraint of trade with the remark that the business of the defendant was not a monopoly, and bases its decision on the ground that the common-law right of a trader to deal with whom he pleased, for what reason he pleased, has not been altered either by the Sherman Law or the Clayton Act. For a discussion of the principles involved in attempted compulsory sales and price maintenance, see 29 HARV. L. REV. 77.

RULE AGAINST PERPETUITIES — INTERESTS SUBJECT TO RULE — LIMITATION FOR LIFE EXPECTANT UPON ESTATE VOID FOR REMOTENESS. — An antenuptial settlement provided that property should be held in trust for the settlor for life, then for his wife for life, then for the children of the marriage who should reach the age of twenty-five, then for the settlor's sisters for life, with further trusts declared. *Held*, that the trust in favor of the sisters is void for remoteness. *Re Hewett's Settlement*, 113 L. T. R. 315 (Ch. Div.).

The rule, that the remoteness of one estate avoids all subsequent estates that are expectant on it, is clear law in England. *Beard* v. *Westcott*, 5 B. & Ald. 801; *Re Thatcher's Trusts*, 26 Beav. 365. The court in the principal case felt bound by these authorities, though considerable criticism has been directed at this rule. See GRAY, PERPETUITIES, 2 ed., §§ 251 *et seq.* See *Crozier* v. *Crozier*, 3 Dr. & War. (Ire.) 353, 369. Since the gift over, though expectant on an estate which is void for remoteness, runs to a person in being, it must necessarily vest within the prescribed period, and is therefore no violation of the rule against remote future interests. See GRAY, PERPETUITIES, 2 ed., § 252; 18 HARV. L. REV. 232. This reasoning is accepted in cases involving powers of appointment. *Crozier* v. *Crozier*, 3 Dr. & War. (Ire.) 353. The rule of the principal case is supported only on the unjustified assumption that in the absence of an express provision the limitations shall be construed as alternative, and the result thus reached more nearly conforms to the intent of the testator or settlor. See *Monypenny* v. *Dering*, 2 DeG. M. & G. 145, 182. It is to be

hoped that the American courts, in which this situation has apparently never arisen, will not follow this illogical rule.

SCHOOLS AND SCHOOL DISTRICTS — DIPLOMA — MANDAMUS FOR DIPLOMA FOR UNQUALIFIED STUDENT ALLOWED TO TAKE PART IN GRADUATION EXERCISES. — Although the plaintiff had not qualified for graduation, the school board, in order to save his parents from humiliation, allowed him to take part in the graduation exercises, for which he bought a class button and the class flower. The real diplomas had not yet come from the printer, and he with the others was given a dummy diploma. Later the school board refused to give him a real diploma, and he demands a mandamus to compel them to. *Held*, that he is not entitled to his writ. *Sweitzer* v. *Fisher*, 154 N. W. 465 (Ia.).

If a student's record has been determined to be satisfactory, and the duty of giving a degree has become ministerial, he is entitled to a mandamus to compel the school board to graduate him. *Keller* v. *Hewitt*, 109 Cal. 146, 41 Pac. 871; *State* v. *Lincoln Medical College*, 81 Neb. 533, 116 N. W. 294. *Cf. People* v. *Bellevue Hospital Medical College*, 60 Hun 107, 14 N. Y. Supp. 490. But the determination of his record is for the school board and a mandamus will not issue to control the exercise of so discretionary a power. *People* v. *New York Law School*, 68 Hun 118, 22 N. Y. Supp. 663; *People* v. *New York, etc. College*, 20 N. Y. Supp. 379; *Niles* v. *Orange Training School*, 63 N. J. L. 528, 42 Atl. 846. As the plaintiff's record, in the principal case, had in fact been determined to be unsatisfactory, his claim can only be supported on the ground that the school board, after allowing him to participate in the forms of graduation and to incur expense thereby, cannot now be heard to say that he was unqualified to do so. However, as there is a public interest in having degrees represent a certain standard of attainment, it is submitted that not by estoppel, nor even by express contract, should a school board be able to bind itself to issue a degree to an unqualified student, or be bound by a degree so issued. See *City of Joliet* v. *Werner*, 166 Ill. 34, 41, 46 N. E. 780, 782. There is a further ground for the decision in the feasibility of an appeal to the county superintendent, for mandamus is essentially an extraordinary remedy. *Marshall* v. *Sloan*, 35 Ia. 445; *Stockton* v. *Board of Education*, 72 N. J. L. 80, 59 Atl. 1061.

SURETYSHIP — SURETY'S DEFENSES — WHETHER AFFECTED BY RISE OF SURETYSHIP AS BUSINESS UNDERTAKING. — The defendant surety company became surety on a bond for a contractor, who promised to pay for all materials used by him. The plaintiff, who furnished materials, accepted from the contractor short-time notes and renewals of them. On the contractor's failure to pay the notes, the plaintiff sued the surety company on the bond. *Held*, that the defendant is liable. *People* v. *Traves*, 154 N. W. 130 (Mich.).

A corporation obtained a loan from the plaintiff, and gave as security a warehouse receipt for goods worth more than the amount of the loan, and notes made by the corporation, and signed by its five stockholders as indorsers. The plaintiff surrendered the warehouse receipt to the corporation, and on its failure to repay the loan, sued two of the stockholders on the notes. *Held*, that the defendants are liable. *Mercantile Trust Co.* v. *Donk*, 178 S. W. 113 (Mo.).

For a discussion of these cases, see NOTES, p. 314.

TAXATION — JOINT STOCK COMPANIES — LIABILITY UNDER FEDERAL CORPORATION TAX. — The plaintiff brings suit as president of the United States Express Company, a joint stock company of New York, to recover money paid as taxes under the Federal Corporation Tax Law which provides that "every corporation . . . joint stock company or association, organized